

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

April 27, 2023 at 10:30 a.m.

1. [19-26574-E-7](#)
[DNL-13](#)

SEAN ALMEIDA
Timothy Walsh

**MOTION FOR COMPENSATION FOR
J. MICHAEL HOPPER, CHAPTER 7
TRUSTEE(S)
4-6-23 [134](#)**

1 thru 2

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

Local Rule 9014-1(f)(2) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 6, 2023. By the court's calculation, 21 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed \$1,000.00).

The Motion for Allowance of Professional Fees was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 7 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, -----

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The Motion for Allowance of Professional Fees is granted.
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J. Michael Hopper, the Chapter 7 Trustee, (“Applicant”) for the Estate of Sean Eric Almeida (“Client”), makes a Request for the Allowance of Fees and Expenses in this case. Fees are requested for the period October 22, 2019, through April 4, 2023.

STATUTORY BASIS FOR FEES

11 U.S.C. § 330(a)

(1) After notice to the parties in interest and the United States Trustee and a hearing, and subject to sections 326, 328, and 329, the court may award to a trustee, a consumer privacy ombudsman appointed under section 332, an examiner, an ombudsman appointed under section 333, or a professional person employed under section 327 or 1103 —

(A) reasonable compensation for actual, necessary services rendered by the trustee, examiner, ombudsman, professional person, or attorney and by any paraprofessional person employed by any such person; and

(B) reimbursement for actual, necessary expenses.

In considering the allowance of fees for a professional employed by a trustee, the professional must “demonstrate only that the services were reasonably likely to benefit the estate at the time rendered,” not that the services resulted in actual, compensable, material benefits to the estate. *Ferrette & Slatter v. United States Tr. (In re Garcia)*, 335 B.R. 717, 724 (B.A.P. 9th Cir. 2005) (citing *Roberts, Sheridan & Kotel, P.C. v. Bergen Brunswig Drug Co. (In re Mednet)*, 251 B.R. 103, 108 (B.A.P. 9th Cir. 2000)).

In considering the compensation awarded to a bankruptcy trustee, the Bankruptcy Code further provides:

(7) In determining the amount of reasonable compensation to be awarded to a trustee, the court shall treat such compensation as a commission, based on section 326.

11 U.S.C. § 330(a)(7). The fee percentages set in 11 U.S.C. § 326 expressly states that the percentages are the maximum fees that a trustee may received, and whatever compensation is allowed must be reasonable. 11 U.S.C. § 326(a).

Benefit to the Estate

Even if the court finds that the services billed by a trustee are “actual,” meaning that the fee application reflects time entries properly charged for services, the trustee must demonstrate still that the work performed was necessary and reasonable. *Unsecured Creditors’ Comm. v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 958 (9th Cir. 1991). A trustee must exercise good billing judgment with regard to the services provided because the court’s authorization to employ a trustee to work in a bankruptcy case does not give that trustee “free reign to run up a [professional fees and expenses] tab without considering the maximum probable recovery,” as opposed to a possible recovery. *Id.*; see also *Brosio v. Deutsche Bank Nat’l Tr. Co. (In re Brosio)*, 505 B.R. 903, 913 n.7 (B.A.P. 9th Cir. 2014) (“Billing judgment is mandatory.”). According the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

- (a) Is the burden of the probable cost of legal [or other professional] services disproportionately large in relation to the size of the estate and maximum probable recovery?
- (b) To what extent will the estate suffer if the services are not rendered?
- (c) To what extent may the estate benefit if the services are rendered and what is the likelihood of the disputed issues being resolved successfully?

In re Puget Sound Plywood, 924 F.2d at 958–59 (citing *In re Wildman*, 72 B.R. 700, 707 (N.D. Ill. 1987)).

A review of the application shows that Applicant’s services for the Estate include employing and supervising counsel, litigating an adversary proceeding surrounding the extent of liens on real property, and selling real property. The Estate has \$134,910.30 of unencumbered monies to be administered as of the filing of the application. The court finds the services were beneficial to Client and the Estate and were reasonable.

FEES REQUESTED

Applicant requests the following fees:

25% of the first \$5,000.00	\$1,250.00
10% of the next \$45,000.00	\$4,500.00
5% of the next \$389,565.11	\$19,478.26
3% of the balance of \$0.00	\$0.00
Calculated Total Compensation	\$25,228.26
Plus Adjustment	\$0.00
Total Maximum Allowable Compensation	\$25,228.26
Less Previously Paid	\$0.00
<u>Total First and Final Fees Requested</u>	\$25,228.26

FEES ALLOWED

The court finds that the requested fees are reasonable pursuant to 11 U.S.C. § 326(a) and that Applicant effectively used appropriate rates for the services provided. First and Final Fees in the amount of \$25,228.26 are approved pursuant to 11 U.S.C. § 330 are authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

In this case, the Chapter 7 Trustee currently has \$134,910.30 of unencumbered monies to be administered. The Chapter 7 Trustee employed and supervised counsel, litigated an adversary proceeding surrounding the extent of liens on real property, and sold real property. Applicant’s efforts have resulted in a realized gross of \$439,565.11 recovered for the estate. Dckt. 134.

This case required significant work by the Chapter 7 Trustee, with full amounts permitted under 11 U.S.C. § 326(a), to represent the reasonable and necessary fees allowable as a commission to the Chapter 7 Trustee.

Applicant is allowed, and the Chapter 7 Trustee is authorized to pay, the following amounts as compensation to this professional in this case:

Fees	\$25,228.26
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pursuant to this Application as final fees and costs pursuant to 11 U.S.C. § 330 in this case.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Allowance of Fees and Expenses filed by J. Michael Hopper, the Chapter 7 Trustee, (“Applicant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that J. Michael Hopper is allowed the following fees and expenses as trustee of the Estate:

J. Michael Hopper, the Chapter 7 Trustee

Fees in the amount of \$25,228.26

IT IS FURTHER ORDERED that the Chapter 7 Trustee is authorized to pay the fees allowed by this Order from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

Local Rule 9014-1(f)(2) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 6, 2023. By the court's calculation, 21 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed \$1,000.00).

The Motion for Allowance of Professional Fees was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 7 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, -----
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The Motion for Allowance of Professional Fees is granted.
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J. Michael Hopper, the Chapter 7 Trustee ("Applicant") makes a first and final application to approve Chapter 7 compensation to their counsel, the Law Office of Desmond, Nolan, Livaich and Cunningham ("DNLNC").

Fees are requested for the period November 5, 2019, through April 4, 2023. The order of the court approving employment of Applicant was entered on November 30, 2019, with an effective date of November 5, 2019. Dckt. 10. Applicant requests fees in the amount of \$51,181.50 and costs in the amount of \$1,101.71.

APPLICABLE LAW

Reasonable Fees

A bankruptcy court determines whether requested fees are reasonable by examining the circumstances of the attorney's services, the manner in which services were performed, and the results of the services, by asking:

- A. Were the services authorized?
- B. Were the services necessary or beneficial to the administration of the estate at the time they were rendered?
- C. Are the services documented adequately?
- D. Are the required fees reasonable given the factors in 11 U.S.C. § 330(a)(3)?
- E. Did the attorney exercise reasonable billing judgment?

In re Garcia, 335 B.R. at 724 (citing *In re Mednet*, 251 B.R. at 108; *Leichty v. Neary (In re Strand)*, 375 F.3d 854, 860 (9th Cir. 2004)).

Lodestar Analysis

For bankruptcy cases in the Ninth Circuit, “the primary method” to determine whether a fee is reasonable is by using the lodestar analysis. *Marguiles Law Firm, APLC v. Placide (In re Placide)*, 459 B.R. 64, 73 (B.A.P. 9th Cir. 2011) (citing *Yermakov v. Fitzsimmons (In re Yermakov)*, 718 F.2d 1465, 1471 (9th Cir. 1983)). The lodestar analysis involves “multiplying the number of hours reasonably expended by a reasonable hourly rate.” *Id.* (citing *In re Yermakov*, 718 F.2d at 1471). Both the Ninth Circuit and the Bankruptcy Appellate Panel have stated that departure from the lodestar analysis can be appropriate, however. *See id.* (citing *Unsecured Creditors’ Comm. v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 960, 961 (9th Cir. 1991) (holding that the lodestar analysis is not mandated in all cases, thus allowing a court to employ alternative approaches when appropriate); *Digesti & Peck v. Kitchen Factors, Inc. (In re Kitchen Factors, Inc.)*, 143 B.R. 560, 562 (B.A.P. 9th Cir. 1992) (stating that lodestar analysis is the primary method, but it is not the exclusive method)).

Reasonable Billing Judgment

Even if the court finds that the services billed by an attorney are “actual,” meaning that the fee application reflects time entries properly charged for services, the attorney must demonstrate still that the work performed was necessary and reasonable. *In re Puget Sound Plywood*, 924 F.2d at 958. An attorney must exercise good billing judgment with regard to the services provided because the court’s authorization to employ an attorney to work in a bankruptcy case does not give that attorney “free reign to run up a [professional fees and expenses] tab without considering the maximum probable recovery,” as opposed to a possible recovery. *Id.*; *see also Brosio v. Deutsche Bank Nat’l Tr. Co. (In re Brosio)*, 505 B.R. 903, 913 n.7 (B.A.P. 9th Cir. 2014) (“Billing judgment is mandatory.”). According to the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

- (a) Is the burden of the probable cost of legal [or other professional] services disproportionately large in relation to the size of the estate and maximum probable recovery?
- (b) To what extent will the estate suffer if the services are not rendered?
- (c) To what extent may the estate benefit if the services are rendered and what is the likelihood of the disputed issues being resolved successfully?

In re Puget Sound Plywood, 924 F.2d at 958–59 (citing *In re Wildman*, 72 B.R. 700, 707 (N.D. Ill. 1987)).

A review of the application shows that Applicant's services for the Estate include assisting with the sale of real property and various law and motion relief surrounding the property . The Estate has \$134,910.30 of unencumbered monies to be administered as of the filing of the application. The court finds the services were beneficial to Client and the Estate and were reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

Applicant provides a task billing analysis and supporting evidence for the services provided, which are described in the following main categories.

General Case Administration: Applicant spent 0.40 hours in this category. Applicant communicated with the Trustee and the Debtor's attorney Timothy Walsh, regarding estate funds and claims filing notice respectively.

Asset Marking & Sales: Applicant spent 7.00 hours in this category. Applicant reviewed a title report, drafted an addendum, and communicated with the Trustee as well as others.

Litigation & Contested Matters: Applicant spent 99.40 hours in this category. Applicant filed and prosecuted an adversary proceeding, drafted two stipulations, a settlement agreement, a motion for judgment on the pleadings, a motion for prevailing party fees, and researched attorneys fees for the adversary proceeding.

Asset Analysis & Recovery: Applicant spent 9.90 hours in this category. Applicant drafted a memorandum, prepared a discovery application, communicated with the Trustee, and reviewed the Debtor's documents.

Asset Disposition: Applicant spent 22.70 hours in this category. Applicant drafted the motion to approve sale of the subject property, and communicated with the Trustee regarding an overbidder, a payoff demand, a sale order, and a settlement statement.

Fee/Employment Applications: Applicant spent 21.00 hours in this category. Applicant prepared four applications to employ and two applications to approve compensation.

Claims Administration & Objections: Applicant spent 4.30 hours in this category. Applicant reviewed proof of claims filed in Becky's bankruptcies, reviewed documents regarding Becky's account and judgment, and communicated with NFCU regarding a claimed lien.

Settlement/Non-Binding ADR: Applicant spent 10.80 hours in this category. Applicant drafted a settlement agreement, drafted a motion to approve the stipulation regarding the homestead, and drafted a motion to approve the NFCU settlement.

Discovery: Applicant spent 2.60 hours in this category. Applicant drafted initial discovery disclosures and communicated with NFCU.

The fees requested are computed by Applicant by multiplying the time expended providing the services multiplied by an hourly billing rate. The persons providing the services, the time for which compensation is requested, and the hourly rates are:

Names of Professionals and Experience	Time	Hourly Rate	Total Fees Computed Based on Time and Hourly Rate
J. Russell Cunningham, Partner	55.70	\$425.00	\$23,672.50
J. Russell Cunningham, Partner	1.50	\$495.00	\$742.50
Kristen D. Renfro, Partner	0.50	\$275.00	\$137.50
Nicholas L. Kohlmeyer, Associate	18.50	\$275.00	\$5,087.50
Benjamin C. Tagert, Associate	8.40	\$175.00	\$1,470.00
Benjamin C. Tagert, Associate	78.10	\$225.00	\$17,572.50
Mikayla E. Kutsuris, Associate	11.20	\$195.00	\$2,184.00
Jennifer Carver, Former Law Clerk	4.20	\$75.00	<u>\$315.00</u>
Total Fees for Period of Application			\$51,181.50

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$1,101.71 pursuant to this application.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Photocopies	\$0.10	\$252.60
Postage	n/a	\$126.50
Advances (Service Fees and Recording Fee)		\$722.61
Total Costs Requested in Application		\$1,101.71

FEES AND COSTS & EXPENSES ALLOWED

Fees

Hourly Fees

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. First and Final Fees in the amount of \$51,181.50 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

Costs & Expenses

First and Final Costs in the amount of \$1,101.71 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

The court authorizes the Chapter 7 Trustee to pay 100% of the fees and 100% of the costs allowed by the court.

Applicant is allowed, and the Chapter 7 Trustee is authorized to pay, the following amounts as compensation to this professional in this case:

Fees	\$51,181.50
Costs and Expenses	\$1,101.71

pursuant to this Application as final fees and costs pursuant to 11 U.S.C. § 330 in this case.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Allowance of Fees and Expenses filed by J. Michael Hopper (“Applicant”), Chapter 7 Trustee for the Law Office of Desmond, Nolan, Livaich and Cunningham (“DNLC”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that DNLC is allowed the following fees and expenses as a professional of the Estate:

DNLC, Professional employed by the Chapter 7 Trustee.

Fees in the amount of \$51,181.50

Expenses in the amount of \$1,101.71

as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as counsel for the Chapter 7 Trustee.

IT IS FURTHER ORDERED that the Chapter 7 Trustee is authorized to pay 100% of the fees and 100% of the costs allowed by this Order from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

Local Rule 9014-1(f)(2) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, Creditor, creditors, parties requesting special notice, and Office of the United States Trustee on April 4, 2023. By the court's calculation, 23 days' notice was provided. 14 days' notice is required.

The Motion to Value Collateral and Secured Claim was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 7 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, -----

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<p>The Motion to Value Collateral and Secured Claim of Jim Toth is denied.</p>

The Motion to Value filed by Linda Myers ("Debtor") to value the secured claim of Jim Toth ("Creditor"). Debtor provides unauthenticated exhibits of Debtor's original Schedule D and Debtor's amended Schedule C to provide evidence as to the value of the real property securing Creditor's claim. Dckt. 93. Additionally, Debtor's attorney provides a Declaration and supplemental exhibit indicating Creditor has stipulated to "discharge" the debt. Dckts. 104, 105.

Debtor is the owner of the subject real property commonly known as 3166 Godman Avenue, Chico, California ("Property"). Upon the court's review of Debtor's voluntary petition, Dckt. 1, Debtor states in their Schedule A, under penalty of perjury, that the value of the Property as of the petition date is \$225,000.00. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

DISCUSSION

The *Dewsnup* Standard and § 506 Valuations

11 U.S.C. § 506(a) instructs the court and parties in the methodology for determining the value of a secured claim.

(a)(1) An **allowed claim of a creditor** secured by a lien on property in which the estate has an interest, or that is subject to setoff under section 553 of this title, **is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property**, or to the extent of the amount subject to setoff, as the case may be, and is an unsecured claim to the extent that the value of such creditor's interest or the amount so subject to set off is less than the amount of such allowed claim. Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest.

11 U.S.C. § 506(a) (emphasis added).

11 U.S.C. § 506(a) is a tool that allows the court to determine the extent of a secured claim (rights and interest in collateral) and bifurcate the claim into a secured and unsecured portion. Section 506(a) is often referred to as a “lien strip,” however, it does not remove a lien from the property. *Dewsnup v. Timm*, 502 U.S. 410, 417 (1992). As the Supreme Court of the United States has held,

... § 506(d) **does not allow petitioner to "strip down" respondents' lien**, because respondents' claim is secured by a lien and has been fully allowed pursuant to § 502. Were we writing on a clean slate, we might be inclined to agree with petitioner that the words “allowed secured claim” must take the same meaning in § 506(d) as in § 506(a). But, given the ambiguity in the text, we are **not convinced that Congress intended to depart from the pre-Code rule that liens pass through bankruptcy unaffected.**

Id. (emphasis added). The Supreme Court reaffirmed this position in 2015, stating:

These consolidated cases present the question **whether a debtor in a Chapter 7 bankruptcy proceeding may void a junior mortgage under §506(d)** when the debt owed on a senior mortgage exceeds the present value of the property. We hold that **a debtor may not**, and we therefore reverse the judgments of the Court of Appeals.

Bank of Am., N.A. v. Caulkett, 575 U.S. 790, 792 (2015) (emphasis added).

The Ninth Circuit has also given great weight to the *Dewsnup* decision and its effect in chapter 7 cases, stating, “a **lien was not void to the extent that the loan was undersecured**, but rather the lien securing the **entire amount of the loan survived a Chapter 7 bankruptcy undisturbed.**” *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1169 (9th Cir. 2004) (emphasis added). After *Dewsnup*, courts refuse to allow “lien stripping” in a Chapter 7 case. *Id.*

With respect to other bankruptcy chapters, 11 U.S.C. § 506(a) is not a standalone statute. Where a debtor is seeking rehabilitative relief under chapters 11, 12, and 13, a debtor may bifurcate a claim and modify the contractual obligations in the debtor-creditor relationship. In the rehabilitative bankruptcy chapters, § 506(a) is used to determine the value of the secured portion of a claim, modify the underlying contractual obligations between the creditor and debtor, and allow the debtor to pay the secured portion through the plan, the remainder to be treated as an unsecured claim.

In a chapter 13 case, for example, 11 U.S.C. § 1322(b)(2) can be used to modify the rights of holders of secured claims and 11 U.S.C. § 506(a) can be used for a judicial valuation of the collateral to determine the status of the claim, thus bifurcating the secured and unsecured portion. *Zimmer v. PSB Lending Corp. (in Re Zimmer)*, 313 F.3d 1220, 1224 (9th Cir. 2002) (citing *Nobelman v. Am. Sav. Bank*, 508 U.S. 324, 329 (1993)). A debtor would then fund the secured claim through the plan, and the unsecured portion would be treated as an unsecured claims.

There is no bankruptcy code provision, however, that allows a chapter 7 debtor to bifurcate a claim and modify the underlying contractual agreements between the mortgagor and mortgagee to “lien strip.” Rather, a creditor’s lien will stay on the real property, as it was bargained for by the creditor and debtor. *Dewsnup* 502 U.S. at 417.

Here, Debtor is attempting to use 11 U.S.C. § 506(a) in their chapter 7 to “lien strip.” As detailed above, the Supreme Court has forbidden the use of § 506(a) to lien strip, and the lien survives this chapter 7 case.

Proof of Claim Requirement for § 506 Valuations

Even if the court could “lien strip” under 11 U.S.C. § 506, for the court to determine a creditor’s secured claim, that creditor must be a party who has been served and is before the court. U.S. Constitution Article III, Sec. 2 (case or controversy requirement for the parties seeking relief from a federal court). Additionally, as § 506(a)(1) states, the value of a secured claim can be determined only to an allowed claim. A claim is deemed allowed only if a proof of claim is filed. 11 U.S.C. § 501, 502; Federal Rules of Bankruptcy Procedure 3002(a).

If a claim is disallowed under section 502(b)(5) or 502(e), or for failure to file a proof of claim, the lien continues unaffected. 4 Collier on Bankruptcy P 506.06 (16th 2023). “[I]n order for the lien to be avoided, either the holder or another person entitled to do so must file a proof of claim with respect to the creditor’s claim or otherwise seek disallowance of the claim or avoidance of the lien. The creditor would, of course, be entitled to ‘notice and a hearing’ with respect to an objection to the filed proof of claim.” 4 Collier on Bankruptcy P 506.06 (16th 2023)

The court has reviewed the Claims Registry for this bankruptcy case. No Proof of Claim has been filed by creditor or debtor. Additionally, the deadline to file proof of claims was over eleven years ago. Notice to File Proof of Claim, Dckt. 15. Thus, the court cannot value the claim as it is not an allowed claim, and the deadline to file claims has passed.

“Discharge of Debt” by Creditor

In the Supplemental Declaration filed by Debtor’s counsel, Dckt. 104, he provides testimony

authenticating Exhibit C, which is stated to be a letter from Creditor stating that he does not oppose the Motion. Supp. Dec., ¶ 2; Dckt. 104.

Reviewing Exhibit C, the court first notes that the “letter” (it is a handwritten note, with the handwriting being different from Creditor’s signature on the letter, which states in its entirety:

4-12-2023

To whome [*sic*] It May Concern,

I Jim Toth am discharging the debts of Linda Myer [misspelling
the last name] on the property known as 3166 Godman Ave. Chico Calif.
Case No: 2011-44395

Jim Toth 4-12-2023 [signature and date in different
handwriting than the letter]

Phone # [xxx-xxx-8855]

Though stated by Debtor’s counsel as a non-opposition letter, it does not state that Creditor does not oppose the motion, but that Creditor will take some future act for the “discharging the debts” of debtor which are “on the property.” It is unclear as to what authority Creditor has to discharge debts, as opposed to forgiving the debts (which forgiveness can have gift tax consequences for the forgiving party).

The “letter” is not a declaration or non-hearsay testimony to support the assertion.

The letter does not state that Creditor will remove his lien from the property, but just that the “debts” are to be discharged. If Creditor is forgiving the debts or is willing to voluntarily release his lien, then that is simply done by obtaining a reconveyance of the deed of trust.

No copy of the Deed of Trust to be reconveyed or any note securing it has been provided by Debtor. Even if the Debtor has lost her copies, a copy of the Deed of Trust could be obtained from the County Recorder. Even though a copy of the Deed of Trust would not provide a basis for the relief requested, its absence shows yet another corner cutting measure by Debtor.

If the Debtor seeks to clear title to the Real Property, the Debtor may do so as provided under the law. There is no legal basis for this court to void a deed of trust on a motion to value as provided in 11 U.S.C. § 506(a) in a Chapter 7 case.

For the aforementioned reasons, the Motion is denied.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Value Collateral and Secured Claim filed by Linda Myers (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Value Collateral and Secured Claim of Jim Toth is denied.